

Subject: Re: NL obo MC v NYC DOE, 21-cv-11215
Date: Thursday, May 5, 2022 at 1:49:40 PM Eastern Daylight Time
From: Alexander, Darian (Law) <daalexan@law.nyc.gov>
To: Benjamin Kopp <bkopp@cuddylawfirm.com>
Attachments: image001.png

Thanks. You likely saw the the letter motion is filed. The cover letter and record will be filed shortly. While taking a last look at the record, I realized that the first, third, and fourth files were text searchable only on a portion of their pages. I am in the process of finishing the OCR-ing, after which I will file.

Darian Alexander

General Litigation Division
New York City Law Department
(212) 356-2174 (tel.)
(646) 983-9629 (cell)
daalexan@law.nyc.gov

From: Benjamin Kopp <bkopp@cuddylawfirm.com>
Sent: Thursday, May 5, 2022 1:01:44 PM
To: Alexander, Darian (Law) <daalexan@law.nyc.gov>
Subject: [EXTERNAL] Re: NL obo MC v NYC DOE, 21-cv-11215

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Good to file

From: "Alexander, Darian (Law)" <daalexan@law.nyc.gov>
Date: Thursday, May 5, 2022 at 12:59 PM
To: Benjamin Kopp <bkopp@cuddylawfirm.com>
Subject: RE: NL obo MC v NYC DOE, 21-cv-11215

Hi Ben - please see attached the letter motion and the cover letter to accompany the sealed filing of the record itself. (I left the CL's docket reference to the letter motion highlighted for now but will finalize once the letter motion is in.) Please let me know if you have any comments.

Thanks,
Darian

Darian Alexander

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daalexan@law.nyc.gov

From: Benjamin Kopp <bkopp@cuddylawfirm.com>
Sent: Thursday, May 5, 2022 11:12 AM
To: Alexander, Darian (Law) <daalexan@law.nyc.gov>
Subject: [EXTERNAL] Re: NL obo MC v NYC DOE, 21-cv-11215

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Thanks

From: "Alexander, Darian (Law)" <daalexan@law.nyc.gov>
Date: Thursday, May 5, 2022 at 11:10 AM
To: Benjamin Kopp <bkopp@cuddylawfirm.com>
Subject: Re: NL obo MC v NYC DOE, 21-cv-11215

Hi Ben,

Thanks for your response in Kiteworks. I expect I'll be ready to file early afternoon, and I too am hoping to do so sooner than later. I've drafted a letter motion and am working on a few edits. And as requested, I will send it to you once ready.

Best,
Darian

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daalexan@law.nyc.gov

From: Benjamin Kopp <bkopp@cuddylawfirm.com>
Sent: Thursday, May 5, 2022 11:04 AM
To: Alexander, Darian (Law) <daalexan@law.nyc.gov>
Subject: [EXTERNAL] Re: NL obo MC v NYC DOE, 21-cv-11215

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Hi Darian, following up on the below. As I mentioned in the separate email following the below one,

the attachments finally appeared for me. Please let me know how soon you can have these filed under seal so that we can have a quick decision back.

(Sent below via Kiteworks)

RE: NL obo MC v NYC DOE, 21-cv-11215

bkopp@cuddylawfirm.com

May 4, 2022, 10:34 PM

daalexan@law.nyc.gov

No attachments

Hi Darian,

I do not see the two versions, but as long as they are substantively the same as my copies, I am fine with any aesthetic that will be easy for the Court to review in accordance with the Individual Practices. I am also fine with your office moving to file under seal; please send me a copy of the letter-motion when it is ready. As the Court's endorsements have been entered on Fridays, I would prefer that the motion is made tomorrow morning, to give the Court plenty of time to review so that we do not risk a decision being postponed until next week.

From: "Alexander, Darian (Law)" <daalexan@law.nyc.gov>

Date: Wednesday, May 4, 2022 at 10:24 PM

To: Benjamin Kopp <bkopp@cuddylawfirm.com>

Subject: RE: NL obo MC v NYC DOE, 21-cv-11215

(Sent this message via Kiteworks, with the attachments.)

Hi Ben,

Thanks for sending. The record looks good, though I noticed that one document -- NL obo MC (21-cv-11215) - Record 137-212 -- was not text searchable, so I applied OCR to it.

Additionally, that same document had many pages in landscape orientation, so the Bates numbers were perpendicular to the pages' body text. I've therefore created two versions of the document:

- NL obo MC (21-cv-11215) - Record 137-212_1: As in the version you sent, the Bates stamps for those pages are on lower edge, as is standard, but the pages' body text reads perpendicularly from bottom to top;
- NL obo MC (21-cv-11215) - Record 137-212_2: The pages' body text reads left to right, but the those pages' Bates stamps are on the left edge.

I think either version is fine, and I'm inclined to go with NL obo MC (21-cv-11215) - Record 137-212_1. Do you agree?

Additionally, do you mind if my office handles the motion to file the record under seal?

Best,
Darian

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From: Benjamin Kopp <bkopp@cuddylawfirm.com>
Sent: Wednesday, May 4, 2022 9:07 PM
To: Alexander, Darian (Law) <daalexan@law.nyc.gov>
Subject: [EXTERNAL] Re: NL obo MC v NYC DOE, 21-cv-11215

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We have not created one

From: "Alexander, Darian (Law)" <daalexan@law.nyc.gov>
Date: Wednesday, May 4, 2022 at 9:05 PM
To: Benjamin Kopp <bkopp@cuddylawfirm.com>
Subject: RE: NL obo MC v NYC DOE, 21-cv-11215

Thanks, Ben. Just to confirm – did you say that your office had also created a table of contents for the record?

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From: Benjamin Kopp <bkopp@cuddylawfirm.com>
Sent: Wednesday, May 4, 2022 7:21 PM
To: Alexander, Darian (Law) <daalexan@law.nyc.gov>
Subject: [EXTERNAL] Re: NL obo MC v NYC DOE, 21-cv-11215

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Hi Darian, here is the filing under seal language that we discussed a moment ago.

From: "Alexander, Darian (Law)" <daalexan@law.nyc.gov>
Date: Wednesday, May 4, 2022 at 6:56 PM
To: Benjamin Kopp <bkopp@cuddylawfirm.com>
Subject: RE: NL obo MC v NYC DOE, 21-cv-11215

Thanks, Ben. Sorry I missed your call earlier. I tried your 315-207-5584 number but wasn't able to reach you. What did you want to discuss?

Best,
Darian

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daalexan@law.nyc.gov

From: Benjamin Kopp <bkopp@cuddylawfirm.com>
Sent: Wednesday, May 4, 2022 2:32 PM
To: Alexander, Darian (Law) <daalexan@law.nyc.gov>
Subject: [EXTERNAL] Re: NL obo MC v NYC DOE, 21-cv-11215

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Yes, I will see how quickly we can have them pulled for you.

From: "Alexander, Darian (Law)" <daalexan@law.nyc.gov>
Date: Wednesday, May 4, 2022 at 11:05 AM
To: Benjamin Kopp <bkopp@cuddylawfirm.com>
Subject: RE: NL obo MC v NYC DOE, 21-cv-11215

Hi Ben,

Can you please send me your firm's billing statements for this action?

Thanks,
Darian

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daalexan@law.nyc.gov

From: Alexander, Darian (Law) <daalexan@law.nyc.gov>
Sent: Monday, May 2, 2022 4:32 PM
To: Benjamin Kopp <bkopp@cuddylawfirm.com>
Subject: Re: NL obo MC v NYC DOE, 21-cv-11215

I'm fine with Parent's Exhibit E staying in the record. I'm also fine with your office's paralegals preparing the record, though I appreciate your raising that point in your earlier email.

Thanks,
Darian

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daalexan@law.nyc.gov

From: Benjamin Kopp <bkopp@cuddylawfirm.com>
Sent: Monday, May 2, 2022 3:02 PM
To: Alexander, Darian (Law) <daalexan@law.nyc.gov>
Subject: [EXTERNAL] Re: NL obo MC v NYC DOE, 21-cv-11215

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Hi Darian,

The IHO relies on Exhibit E in the FOFD, including at page 12, so he was not striking it (and the Parent had not re-withdrawn it). Also, if you look at the exhibit file, calling the two duplicative of one another would have been a clear mistake, as one was Cooke's notes and the other was CSE's notes.

From: "Alexander, Darian (Law)" <daalexan@law.nyc.gov>
Date: Monday, May 2, 2022 at 2:49 PM
To: Benjamin Kopp <bkopp@cuddylawfirm.com>
Subject: RE: NL obo MC v NYC DOE, 21-cv-11215

Hi Ben,

I'm glad that we're in agreement on most of these issues. Additionally, I did see in the hearing transcript that IHO Weiner re-admitted Parent's Exhibit E (along with Exhibits C and M) during the 12/4/2020 hearing. However, the 1/25/2021 FOFD indicates that IHO Weiner later reversed course on Exhibit E:

PARENT'S EVIDENCE:

....

E.withdrawn; submitted on 11/23/20 but duplicative of D.

You had originally withdrawn Exhibit E because it was duplicative of DOE's (later stricken) Exhibit 6, so the IHO's note "but duplicative of D" suggests new grounds and a re-assessment on his part. Do you read that FOFD excerpt differently than I do?

Best,
Darian

Darian Alexander

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daalexan@law.nyc.gov

From: Benjamin Kopp <bkopp@cuddylawfirm.com>
Sent: Saturday, April 30, 2022 4:06 PM
To: Alexander, Darian (Law) <daalexan@law.nyc.gov>
Subject: [EXTERNAL] Re: NL obo MC v NYC DOE, 21-cv-11215

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Hi Darian,

I agree that, in addition to DOE's disclosures, the DOE's cover sheet and Parent Exs. T & W should be excluded before Bates stamping. Parent Ex. E, however, was re-submitted and admitted alongside Parent Exs. C & M – I am attaching the letter and transcript reflecting this, which are already in the Chronological Folder. Because 8 NYCRR 200.5(j)(5)(vi)(h) uses the expansive "may be otherwise required" (setting aside any reading of subsections [b] or [c]), Plaintiff will plan to include them – I am glad that we are able to agree to disagree on this point without having to litigate it.

(Assuming that you agree with keeping Parent Ex. E) How soon could the City have the above done

and Bates stamped? As we would be asking for our paralegals to be compensated at their \$225/hr rates for their time doing this, I do not want you to feel that we are insisting on it if your office can have it done in a timely-enough manner that we do not need to ask for any extensions – although I am sure that you have probably considered all of this in a cost-benefit analysis of the City's and your paralegals' current resources and availabilities.

I did read Judge Schofield's memo endorsement the same way. Incidentally, given DPC-to-Appointment timelines that were updated within the last few days, my calculation is that an IHO should be appointed for this case within the next two weeks; so I am hoping there is no need to renew the request.

Thanks,

Ben

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From: "Alexander, Darian (Law)" <daalexan@law.nyc.gov>

Date: Friday, April 29, 2022 at 7:32 PM

To: Benjamin Kopp <bkopp@cuddylawfirm.com>

Subject: RE: NL obo MC v NYC DOE, 21-cv-11215

Hi Ben,

I think the folder you created with the chronologically renamed files is fine, with a few exceptions:

- You rightly noted that DOE's exhibits were stricken from the record. Those exhibits were included in your chronological folder but should be excluded from the record before Bates-stamping. I'm inclined to say that DOE's Disclosure List should be excluded too. Those file names are:
 - 2020 09 24 - NL v. DOE - Case No. 192541 - Exhibits & Lists - DOE Combined Disclosure for M□C□ IHO # 192541
 - 2020 09 24 - NL v. DOE - Case No. 192541 - Exhibits & Lists - M□C□ Disclosure Cover Sheet
- A couple of the Parent's exhibits (P-T and P-W) were stricken (10/1/20 hearing, pp. 47-48) without being later restored. Additionally, on p. 16 of the FOFD, the IHO deemed P-E withdrawn. These exhibits should be excluded from the record as well. They are in the document named "2020 09 26 - NL v. DOE - Case No. 192541 - Exhibits & Lists - C□M□ - Parent's Exhibits," at the following pages:
 - P-E: pp. 47-50
 - P-T: pp. 159-163
 - P-W: pp. 172-173
- On my reading of 8 N.Y.C.R.R. 200.5(j)(5)(vi)(b),(c),(h), I'm not persuaded that the various email notices you received from DoNotReply@schools.nyc.gov are part of the administrative record. They are not party submissions to the IHO ('b') or orders or rulings from the IHO ('c'), and they do not appear to be "otherwise required" by 8 N.Y.C.R.R. 200.5. They should be excluded. That said, if Plaintiffs insist on their inclusion, Defendant does not intend to treat that as a basis for objecting to the record.

Assuming that you agree with these exclusions—or at least the exclusions related to party exhibits noted in the first two main bullets—feel free to have your office's paralegals prepare the Bates-stamped record accordingly. Thank you.

Separately, Judge Schofield's memo endorsement earlier today, which denied Plaintiff's request to have the Court assume jurisdiction over Case No. 223953 and ordered the parties to brief the fee claims related to Case Nos. 192541 and 195403, suggests that Judge Schofield wants the parties' prospective briefing to address only the fees issue. In light of that, I would suggest that the few documents related to Case No. 223953 should not be included in the administrative record. (Of course, it may not be necessary to note that, as you did not include those documents in the chronological folder.)

Best,
Darian

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daalexan@law.nyc.gov

From: Benjamin Kopp <bkopp@cuddylawfirm.com>
Sent: Friday, April 29, 2022 3:00 PM
To: Alexander, Darian (Law) <daalexan@law.nyc.gov>
Subject: [EXTERNAL] Re: NL obo MC v NYC DOE, 21-cv-11215

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Hi Darian, I just left a voicemail for each your office and cell. We need to know immediately about the administrative record/Bates stamping so that it can be timely filed under seal and cited for the parties' papers and included for ease of further 56.1 discussions. If I do not hear back from you by close of business today, I will assume that DOE is alright with the chronological folder and designations therein and plan to have my office's paralegals Bates stamp them Monday (5/2) so that leave to file under seal can be sought Tuesday (5/3) morning.

Thanks,

Ben

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From: Benjamin Kopp <bkopp@cuddylawfirm.com>
Date: Wednesday, April 27, 2022 at 1:26 PM
To: "Alexander, Darian (Law)" <daalexan@law.nyc.gov>

Subject: Re: NL obo MC v NYC DOE, 21-cv-11215

Hi Darian, following up on the Bates stamping and the 56.1 Statement.

Best,
Ben

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From: "Alexander, Darian (Law)" <daalexan@law.nyc.gov>
Date: Wednesday, April 13, 2022 at 9:25 PM
To: Benjamin Kopp <bkopp@cuddylawfirm.com>
Subject: RE: NL obo MC v NYC DOE, 21-cv-11215

Thanks, Ben. I'll review the chronological folder you created in Kiteworks.

Darian Alexander
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From: Benjamin Kopp <bkopp@cuddylawfirm.com>